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September 26, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: CC Docket No. 92-166

Dear Mr. Caton:

Newcomb Communications, Inc. ("Newcomb"), by its attorneys, hereby submits this letter to address certain critical issues raised by the "Joint Proposal and Settlement Agreement" ("Joint Proposal") filed in the above-referenced proceeding on September 9, 1994.<sup>1</sup> The Joint Proposal is advanced as a purported solution to many open issues with respect to the adoption of rules and policies pertaining to the use of the 1610 - 1626.5/2483.5 - 2500 MHz frequency bands (RDSS/MSS Spectrum) for the provision of Mobile Satellite Service ("MSS").<sup>2</sup> More specifically, the Joint Proposal sets forth a Band Segmentation Plan (Item 1) and, in conjunction with Item 5, enumerates the way the current LEO MSS Applicants would utilize and/or have access to the RDSS/MSS Spectrum now or in the future.

Newcomb is a licensee and operator of an interim RDSS system in the 1610-1626.5 MHz frequency band (1.6 GHz). Newcomb's system, which has been operating since early 1992, provides critical distress and safety services to numerous U.S. Government, law enforcement, and commercial users. Indeed, during the 30 day period ending on September 15, 1994, Newcomb's system carried over 330,000 messages, most of which related to safety of crew in remote operations. As such, Newcomb has a direct and vital interest in the rules and policies which will be adopted imminently, by the Commission, in this proceeding. To that end, Newcomb has

<sup>1</sup> The Joint Proposal was submitted by Constellation Communications, Inc., Mobile Communications Holdings, Inc., Motorola Satellite Communications, Inc. and TRW, Inc. A letter supporting the domestic band-sharing plan outlined in Item 1 of the Joint Proposal, but objecting to other portions of the Joint Proposal, was submitted by Loral/QUALCOMM Partnership, L.P. on September 13, 1994. (Collectively, those submitting the Joint Proposal and Loral/QUALCOMM are referred to herein as the "LEO MSS Applicants.")

<sup>2</sup> These frequencies are allocated to MSS on a co-primary basis with the Radiodetermination Satellite Service (RDSS) and other services. 9 FCC Rcd. 536 (1994).

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participated in this proceeding to preserve the future viability of RDSS systems in the 1.6 GHz band and to ensure that essential life saving RDSS services like Newcomb's remain available<sup>3</sup>. Newcomb was not, however, a party to the negotiations which resulted in the Joint Proposal. As a result, certain aspects of the Joint Proposal, if adopted, could significantly threaten the ability of Newcomb's and other RDSS systems<sup>4</sup> to have access to the space segment necessary to provide their RDSS service once their current space segment is no longer available. Newcomb noted in its June 20, 1994 Reply Comments in CC Docket No. 92-166 that obtaining LEO MSS space segment capacity may be necessary in the future to provide follow-on service to Newcomb's current RDSS system.

Competition Should Not Be Restricted Through Limiting  
Access To The RDSS/MSS Spectrum To Only The Current LEO MSS Applicants

Those portions of the Joint Proposal which seek to prevent any future assignment of this RDSS/MSS Spectrum to any applicant but the current LEO/MSS Applicants, and further limits it only to those current applicants which proceed to an operational system under their initial construction permit (Items 1 and 5), would have a serious affect on the ability of RDSS providers to continue to bring the benefits of their services to the public. This would occur because the supply of LEO MSS space segment capacity could be controlled by as few as one licensee who, under the Joint Proposal, would have the exclusive opportunity to use the entire allocated bandwidth with no future opportunity for competing systems to demonstrate public interest benefits.

The current RDSS/MSS Spectrum can handle multiple space segment suppliers. Moreover, the current LEO MSS Applicants themselves believe that the market can support multiple LEO/MSS licensees. Therefore, there is simply no reason to limit, at this time, access to RDSS/MSS Spectrum assignments which may be available in the future if all the current LEO MSS Applicants do not follow through with their currently planned systems. Adopting a regulatory framework which could lead to an eventual, permanent, *de facto* monopoly in a market where competition can effectively exist will have a significant and adverse impact on the public interest benefits that the initial spectrum allocation to LEO MSS was found to promote.

Finally, if the Commission permits the LEO MSS licensees to offer their capacity on a non-common carrier basis (Item 12), and provisions are not made to ensure that bulk capacity is available to RDSS system providers, like Newcomb, who may need to obtain this capacity to continue providing their RDSS service in lieu of constructing a dedicated RDSS satellite, competition in the 1.6 GHz band will be non-existent. This is particularly so if the potential number of LEO MSS suppliers is prematurely and unnecessarily limited from the start.

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<sup>3</sup> Newcomb has previously endorsed the alternative sharing proposal advocated by Mobil DataCom Corporation which would assign the center 11.35 MHz of the 1.6 GHz spectrum to CDMA technology with two equal 2.575 MHz assignments on either side for the TDMA systems. This sharing plan would increase the Commission's flexibility to vary the amount of spectrum that may ultimately be reassigned to, or from, CDMA systems while mitigating the costs, due to the maintenance of a uniform center frequency.

<sup>4</sup> Newcomb understands that similar concerns with respect to the Joint Proposal are shared by Mobile DataCom Corporation, another RDSS service provider at 1.6 GHz.

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For these reasons, Newcomb vigorously renews its request that the Commission carefully consider the continued ability of current and prospective RDSS licensees to provide RDSS service at 1.6 GHz when it adopts rules and policies applicable to LEO MSS licensees and the RDSS/MSS Spectrum.

Respectfully submitted,

NEWCOMB COMMUNICATIONS, INC.

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## **CERTIFICATE OF SERVICE**

I, Michelle D. O'Brien, hereby certify that copies of the foregoing letter of Newcomb Communications, Inc. in CC Docket No. 92-166 was served by hand, unless otherwise specified, this 26th day of September 1994, on the following persons:

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